

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRUCE E KRELL,
Plaintiff,

v.

CITY & COUNTY SAN FRANCISCO, et
al.,
Defendants.

Case No. [15-cv-01833-KAW](#)

**ORDER STRIKING PLAINTIFF'S
AMENDED COMPLAINT; ORDER
TERMINATING DEFENDANT'S
MOTION TO STRIKE AND MOTION
TO DISMISS; ORDER TO SHOW
CAUSE**

Re: Dkt. Nos. 20, 21, 22

On April 23, 2015, Plaintiff Bruce E. Krell filed a complaint against the City and County of San Francisco alleging that he was subjected to harassment while operating a parking lot. On June 1, 2015, Defendant filed a motion to dismiss and a motion to strike. Thereafter, the parties stipulated to extend the briefing schedule and to continue the hearing date on both motions.

Pursuant to the stipulation, Plaintiff's opposition was due on July 27, 2015. (Dkt. No. 16.)

On July 27, 2015, Plaintiff instead filed an amended complaint. (Dkt. No. 20.) Under Rule 15(a)(1)(B), a party may amend its pleading once as a matter of course within 21 days of being served with a motion under Rule 12(b). The amended complaint, however, was filed more than 21 days after service of the 12(b)(6) motion. Therefore, Plaintiff was required to either obtain Defendant's consent to file an amended complaint or obtain leave of court prior to filing the amended complaint. Fed. R. Civ. P. 15(a)(2). Plaintiff has done neither.

ORDER STRIKING THE FIRST AMENDED COMPLAINT

Accordingly, the amended complaint (Dkt. No. 20) is stricken, such that the operative complaint is the initial complaint. Therefore, Defendant's pending motion to dismiss the amended complaint (Dkt. No. 21) and motion to strike the amended complaint (Dkt. No. 22) are TERMINATED as moot.

ORDER TO SHOW CAUSE

The hearing date on the motions to dismiss and strike the initial complaint (Dkt. Nos. 8 & 9) remain on the Court's September 3, 2015 calendar.

As Plaintiff has failed to oppose both motions, by no later than **August 10, 2015**, the Court orders Plaintiff to (1) show cause why the motions should not be granted for failure to file oppositions, and (2) file either oppositions to both motions or statements of non-opposition to both motions. The response to this order to show cause and the oppositions should be filed as separate documents. Failure to timely file all three documents will result in the granting of both motions. *See* Judge Westmore's General Standing Order ¶ 22 ("The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion").


The Court is aware that a settlement conference is scheduled on September 4, 2015. Thus, the Court is willing to entertain any stipulations that may obviate some or all of Plaintiff's obligations in the order to show cause.

FUTURE AMENDMENT TO PLEADINGS

Should Plaintiff still wish to file an amended complaint, the Court directs him to meet and confer with Defendant in an attempt to gain its consent and avoid unnecessary motion practice. *See* Fed. R. Civ. P. 15(a)(2). Any stipulation should address the outstanding motions to dismiss and strike the initial complaint. If Plaintiff is unable to procure a stipulation, he must obtain leave of court prior to filing an amended complaint. *Id.*

IT IS SO ORDERED.

Dated: August 3, 2015


 KANDIS A. WESTMORE
 United States Magistrate Judge